

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION OPIATE
LITIGATION

This document relates to:
“Track One Cases”

MDL NO. 2804

CASE NO. 1:17-MD-2804

HON. DAN AARON POLSTER

**OBJECTION OF NONPARTY HEALTHCARE DISTRIBUTION ALLIANCE
TO DISCOVERY RULING NO. 14, PART 3**

Pursuant to Federal Rule of Civil Procedure 53(f) and the January 11, 2018 Appointment Order (ECF No. 69), nonparty Healthcare Distribution Alliance (“HDA”) objects to the Special Master’s February 12, 2019 Discovery Ruling No. 14, Part 3 (the “Ruling”) (ECF No. 1359) (Ex. 1). HDA is the national trade association representing primary pharmaceutical distributors, many of whom are defendants in this litigation. In the Ruling, Special Master Cohen concluded that HDA could not assert the common interest privilege over communications reflecting legal advice on issues of mutual concern that HDA’s lawyers held with its members and their individual counsel. In accordance with this Court’s February 8, 2019 Order requiring that any objection to the Special Master’s rulings that relies on new evidence or legal arguments not previously provided to the Special Master for consideration must first be presented to the Special Master before being presented to this Court (ECF No. 1349), HDA has now submitted the attached letter brief (Ex. 2) and the accompanying declaration of Elizabeth A. Gallenagh, Esq., General Counsel for HDA (Ex. 2-A), to Special Master Cohen for his consideration in the first instance. HDA is filing this Objection with the Court now as well, in an abundance of caution, in light of the 21-day deadline for objecting to rulings of the Special Master in order to avoid any suggestion of untimeliness. *See* Appointment Order at 5 (ECF No. 69); Fed. R. Civ. P. 53(f)(2).

The submissions to Special Master Cohen that were made in connection with the Ruling are attached as Exhibits 3–7.

For the reasons set forth in the accompanying materials, HDA respectfully submits that it has satisfied the threshold showing necessary to support the assertion of the common interest privilege over confidential legal communications with members in furtherance of common legal interests, and that if Plaintiffs wish to challenge any particular assertions of such privilege on HDA’s privilege log, this must be done on a document-by-document basis.

Dated: New York, New York
March 5, 2019

Respectfully submitted,

DAVIS POLK & WARDWELL LLP

By: /s/ Brian S. Weinstein

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CERTIFICATE OF SERVICE

I, Brian S. Weinstein, counsel for nonparty Healthcare Distribution Alliance, certify that on March 5, 2019, I electronically filed the Objection of Nonparty Healthcare Distribution Alliance to Discovery Ruling No. 14, Part 3 with the Clerk of Court for the United States District Court for the Northern District of Ohio using the Court's ECF system, which sent notification of such filing to all counsel of record.

/s/ Brian S. Weinstein

Brian S. Weinstein